



Norm Bernstein
<nwbernstein@nwblc.com>
02/10/2006 11:03 AM

To
Subject Court Approval

EPA Region 5 Records Ctr.



299568

Matt/Tom

Some good news. I was informed today that the Court has signed the Order authorizing installation of the TBCW and pump test. Environ has contacted the contractor and it looks like we can get on its schedule for the first week in April. We will keep you informed of any changes. A copy of the Order is attached.

In aid of your thoughts about the o/m and ready for reuse matters, the following facts may be of help.

The current Phase I and Phase II monitoring approach including, as Phase I, the five years of active monitoring, was proposed by Environ on October 15, 2002, in response to a September 23, 20002 e-mail from EPA which in turn responded to an August 21, 2002 letter from Environ. There does not appear to have been any specific rationale for the five year period for the active phase.

Since that time the following changes in the remedy design have occurred to make the design more robust and to increase the ability to rely on the TBCW and the PRGS

September 2003 Changed from trenches and wells to an all trench system (which facilitates water management).

September 2003 Added PRGS effluent monitoring (conditioned on VOCs being detected in surface water and/or trench water samples above acceptable stream concentration).

July 2004 Removed the conditions on PRGS effluent monitoring

September 2005 PRGS sized on very conservative (protective) basis.

September 2005 Changed TBCW from bentonite to Impermix for greater longevity and resistance to chemical degradation

Hope the above is of help.

Norm

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA)	
and STATE OF INDIANA,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. IP 83-1419-C-M/S
)	
THE ENVIRONMENTAL)	
CONSERVATION AND CHEMICAL)	
CORPORATION, et al.,)	
)	
Defendants.)	

STIPULATION AND
ORDER MODIFYING CONSENT DECREE

WHEREAS, on September 10, 1991, this Court entered a Consent Decree executed by the United States of America on behalf of the United States Environmental Protection Agency ("EPA"), the State of Indiana, and approximately 235 defendants in this action (the "Settling Defendants") (collectively referred to as the "Parties");

WHEREAS, the Consent Decree provided for the design and implementation by certain Settling Defendants of a remedial action at the Environmental Conservation and Chemical Corporation Superfund Site (hereafter, the "ECC Site") near Zionsville, Indiana, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*;

WHEREAS, the remedial action consisted of, *inter alia*, a soil vapor extraction system to treat contamination in the soil and groundwater;

WHEREAS, Section VII of the Consent Decree provided that if, after five years of operation of the remedy, EPA determined after consultation with the State, that the

requisite cleanup standards have not been achieved, Settling Defendants agreed to implement the additional work specified in Revised Exhibit A to the Consent Decree, unless the parties agree otherwise;

WHEREAS, in March 2003, EPA determined, after consultation with the State, that the remedial action had not achieved the requisite cleanup standards;

WHEREAS, the additional work in Revised Exhibit A consists of, *inter alia*, the construction of a groundwater collection trench which included a membrane barrier to prevent contaminated water from migrating into or from a nearby drainage ditch;

WHEREAS, after numerous discussions, the parties have agreed that a thin barrier curtain wall would be more effective than a membrane barrier wall in preventing contaminated water from migrating into or from a nearby drainage ditch;

WHEREAS, EPA has approved, in consultation with the State, a design for the construction of a thin barrier curtain wall;

WHEREAS, the parties agree that modification of Revised Exhibit A to the Consent Decree to include the construction of a thin barrier curtain wall will further the objectives of the Consent Decree;

WHEREAS, the parties also agree that if the modification to Revised Exhibit A to the Consent Decree is approved by early November 2005, Settling Defendants will begin construction of the thin barrier curtain wall during the fall construction season;

WHEREAS, the parties further agree that if the modification to Revised Exhibit A to the Consent Decree is approved later than early November 2005, construction of the slurry barrier wall will be delayed until 2006;

WHEREFORE the Parties jointly request that the Court approve the proposed modification to Revised Exhibit A to the Consent Decree;

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

1. Revised Exhibit A to the Consent Decree is modified to include the construction of a thin barrier curtain wall, as specified in the attached diagram, and the deletion of the collection trench membrane barrier; and
2. All other provisions of the Consent Decree, as amended, remain in full force and effect.

SO ORDERED THIS 2 DAY OF Feb, ²⁰⁰⁶~~2005~~.

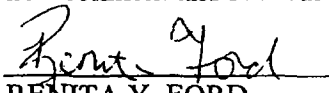

HON. LARRY J. MCKINNEY,
UNITED STATES DISTRICT COURT JUDGE

The undersigned party consents to the above-referenced modifications of Revised Exhibit A to the Consent Decree in *United States and State of Indiana v. The Environmental Conservation and Chemical Corporation, et al.*, (C. A. No. IP 83-1419-C M/S)

UNITED STATES OF AMERICA

KELLY A. JOHNSON
Acting Assistant Attorney General
Environment and Natural Resources Division

Date: 11/7/05


RENITA Y. FORD
Trial Attorney
Environmental Enforcement Section
Environment and Natural
Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 305-0232

SUSAN BROOKS
United States Attorney
Southern District of Indiana

CHARLES GOODLOE, JR.
Assistant U.S. Attorney
U.S. Courthouse, 5th Floor
46 Ohio Street
Indianapolis, Indiana 46204
(317) 226-6333

The undersigned party consents to the above-referenced modifications of Revised Exhibit A to the Consent Decree in *United States and State of Indiana v. The Environmental Conservation and Chemical Corporation, et al.*, (C. A. No. IP 83-1419-C M/S)

November 4, 2005

Respectfully submitted

STEVE CARTER
Indiana Attorney General
Attorney No. 4150-64

By: 

Timothy J. Junk
Deputy Attorney General
Atty. No. 5587-02

Office of the Attorney General
Indiana Government Center South
Fifth Floor
402 W. Washington Street
Indianapolis, IN 46204-2770
Telephone: (317) 232-6247

The undersigned party consents to the above-referenced modifications of Revised Exhibit A to the Consent Decree in *United States and State of Indiana v. The Environmental Conservation and Chemical Corporation, et al.*, (C. A. No. IP 83-1419-C M/S)

A handwritten signature in dark ink, consisting of a large, stylized initial 'D' followed by several loops and a long horizontal stroke extending to the right.

TRUSTEES OF THE ENVIROCHEM TRUST FUND, ON
BEHALF OF THE SETTLING DEFENDANTS

DISTRIBUTION

Renita Y. Ford
Kelly A. Johnson
Environmental Enforcement Section
Environmental and Natural Resources Div.
U.S. Department of Justice
PO Box 7611
Washington, DC 20044-7611

Charles Goodloe, Jr.
Susan Brooks
U.S. Courthouse Fifth Floor
46 Ohio St.
Indianapolis, IN 46204

Willis K. Kunz, Esq.
Kunz & Kunz
10 South New Jersey Street
Indianapolis, IN 46204

William D. Kimme, Esq.
Kimme, Lanke & O'Connor
P.O. Box 128
Washington, MO 63090

John M. Kyle, III, Esq.
Michael R. Fruehwald, Esq.
Dean T. Barnard, Esq.
John IC Maley, Esq.
Barnes & Thornburg
1313 Merchants Bank Bldg.
Indianapolis, IN 46204

Halbert W. Kunz, Esq.
1741 W. 54th Street
Indianapolis, IN 46208

James E. Markle
President Wastex Research, Inc.
200 E. Broadway
East St. Louis, IL 62205

Christopher S. Roberge, Esq.
Roberge, Galbraith & Collignon
9190 Priority Way West Drive
Suite #220
Indianapolis, IN 46240

Thomas Krueger
U.S. Environmental Protection Agency
Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Cassandra Ashley-Jordan
Office of the Attorney General
402 West Washington St.
IGCS, 5th Fl.
Indianapolis, IN 46204

Warren D. Krebs, Esq.
Dutton & Overman
710 Century Bldg., 36 S. Pennsylvania St.
Indianapolis, IN 46204

C. Rex Henthorn, Esq.
Harding, Henthorn & Harris
122 E. Main Street
Crawfordsville, IN 47933-0645

Charles C. MacGregor, Esq.
Richard T. Mullineaux, Esq.
Wyatt Tarrant Combs & Orbison
117 East Spring Street
New Albany, IN 47150

John C. Duffey, Esq.
Stuart & Branigan
8th Fl., The Life Building
P.O. Box 1010
Lafayette, IN 47902

Stephen R. Lewis, Esq.
151 N. Delaware Street
Suite 1960
Indianapolis, IN 46204

Timothy Junk
Assistant Attorney General
Office of the Indiana Attorney General
302 West Washington Street
Indianapolis, IN 46204

William H. Hawkins, III, Esq.
2500 Central Trust Center
Cincinnati, OH 45202

Louis M. Rundio, Esq.
McDermott Will & Emery
227 West Monroe Street, 31st Fl.
Chicago, IL 60606-5096

George W. Pendency, Esq.
9100 Keystone Crossing, Suite 725
Indianapolis, IN 46240

Robert L. Logan, Esq.
H.H. Robertson Company
Two Gateway Center
Pittsburgh, PA 15222

Curtis W. McCauley
Alan H. Goldstein

ICE MILLER
One American Square Box 82001
Indianapolis, IN 46282-0002
317.236.2100

1639803